

SONYA D. WINNER (SBN 200348)
Email: swinner@cov.com
CORTLIN H. LANNIN (SBN 266488)
Email: clannin@cov.com
ISAAC D. CHAPUT (SBN 326923)
Email: ichaput@cov.com
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, California 94105-2533
Telephone: + 1 (415) 591-6000
Facsimile: + 1 (415) 591-6091

*Attorneys for Defendant/Counterclaimant
Intuitive Surgical, Inc.*

ALLEN RUBY (SBN 47109)
allen@allenruby.com
ALLEN RUBY, ATTORNEY AT LAW
15559 Union Ave. #138
Los Gatos, CA 95032
Tel: (408) 477-9690

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SURGICAL INSTRUMENT SERVICE
COMPANY, INC.,

Plaintiff/
Counterclaim-Defendant

vs.

INTUITIVE SURGICAL, INC.,

Defendant/
Counterclaimant.

Case No.: 3:21-cv-03496-VC

**DECLARATION OF ASHLEY BASS IN
SUPPORT OF INTUITIVE SURGICAL,
INC.'S MOTION TO EXCLUDE
TESTIMONY OF RICHARD BERO**

Judge: The Honorable Vince Chhabria

I, ASHLEY BASS, declare as follows:

1. I am an attorney licensed to practice in the District of Columbia and am admitted to practice *pro hac vice* before this Court. I am a partner with the law firm of Covington & Burling LLP, counsel for Intuitive Surgical, Inc. (“Intuitive”) in this matter. If called upon to testify as to the facts set forth herein, I could and would testify competently thereto.
2. Attached to this declaration as **Exhibit 1** is a true and correct copy of the Expert Report of Richard F. Bero, CPA, CVA, served by Plaintiff/Counterclaim-Defendant Surgical Instrument Service Company, Inc. (“SIS”) on Dec. 2, 2022.
3. Attached to this declaration as **Exhibit 2** is a true and correct copy of excerpts of the deposition of Richard Bero taken in this litigation on Mar. 8, 2023.
4. Attached to this declaration as **Exhibit 3** is a true and correct copy of the Expert Damages Rebuttal Report of Loren K. Smith, Ph.D., served by Defendant/Counterclaim-Plaintiff Intuitive Surgical, Inc. (“Intuitive”) on Jan. 18, 2023.
5. Attached to this declaration as **Exhibit 4** is a true and correct copy of the Updated Bero Report Schedules / Errata Sheet, served by SIS on Feb. 25, 2023.
6. Attached to this declaration as **Exhibit 5** is a true and correct copy of the Second Rebuttal Expert Report of Richard F. Bero, served by SIS on Mar. 1, 2023.
7. Attached to this declaration as **Exhibit 6** is a true and correct copy of excerpts of the deposition of Jean Sargent taken in this litigation on Mar. 6, 2023.
8. Attached to this declaration as **Exhibit 7** is a true and correct copy of excerpts of the deposition of Kurt Humphrey, taken on Mar. 15, 2023.

9. Attached to this declaration as **Exhibit 8** is a true and correct copy of excerpts of the Corrected Expert Report of Professor Einer Elhauge, served by the Hospital Plaintiffs on Jan. 10, 2023.¹

10. Attached to this declaration as **Exhibit 9** is a true and correct copy of excerpts of the deposition of Dr. T. Kim Parnell, taken Sept. 24, 2021.

11. Attached to this declaration as **Exhibit 10** is a true and correct copy of an article by Tyler J. Bowles & W. Cris Lewis entitled *A Note on the Credibility of Financial Data Used in Lost-Profit Appraisals* (Litig. Econ. Dig., Spring 1996).

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: March 23, 2023



ASHLEY BASS

¹ For the full Expert Report of Professor Einer Elhauge served on Jan. 10, 2023, *see* Exhibit 1 to the Declaration of Ashley Bass in Support of Defendant Motion to Exclude the Expert Testimony of Einer Elhauge.